



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

October 25, 1991

Mr. Richard D. Monroe  
Associate General Counsel  
Texas Department of Transportation  
125 E. 11th Street  
Austin, Texas 78701-2483

OR91-523

Dear Mr. Monroe:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 13725.

The Texas Department of Transportation (the department) received an open records request for the maintenance and service records covering a six month period for a particular traffic control light that was at the scene of an automobile accident. You contend these records come under the protection of section 3(a)(3) of the Open Records Act. You state:

On July 5, 1991, our Department received a letter from the American International Adjustment Company, Inc. ... which requested certain information concerning the same accident which gave rise to [the current open records request]. The American International letter states that "(s)ince the accident, there has been no conclusion drawn concerning who may have been negligent in the violation of the red light (emphasis added)." Certain information was requested at that time as to the operation of the light in question. That information was furnished. ... Now, we have [the current request] . . . . It seems apparent to us that all of this investigation is related to immi-

nent litigation which will affect our Department and in which we are very likely to be a party.

You have sought the advice of your counsel in this office, and your assertion as to the relevancy of this information is based on his advice. To secure the protection of section 3(a)(3), a governmental body must first demonstrate that it is or will be a party to pending or reasonably anticipated litigation. Open Records Decision Nos. 452 (1986); 360 (1983). The mere chance of litigation will not trigger the 3(a)(3) exception. Open Records Decision No. 328 (1982). To demonstrate that litigation is reasonably anticipated, the governmental body must furnish concrete evidence that litigation involving a specific matter is realistically contemplated and is more than mere conjecture. *Id.*

The evidence you have presented to us suggests that the parties in the traffic accident are considering making the department a party to litigation and that the information at issue "relates" to that litigation. A previous determination of this office, Open Records Decision No. 416 (1984), resolves your request. Because you have met the tests for section 3(a)(3) protection, the department may withhold the requested information.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR91-523.

Yours very truly,

A handwritten signature in cursive script that reads "Susan Garrison".

Susan Garrison  
Assistant Attorney General  
Opinion Committee

SG/RWP/lcd

Ref.: ID# 13725

cc: H.G. Jernigan, P. E.  
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